

REMARKS

Claims 1-23 are pending in the present application. No claims have been added. No claims have been canceled. Therefore upon entry of the present Amendment, claims 1-23 will remain pending in the present application. The Examiner's rejections are quoted below (**bold added for emphasis**):

Claims 1, 6, 9, 16, 10, 17, 14, 21, 15, 23 are rejected under 35 U.S.C. 103(e)[sic] as being unpatentable over **Hub et al. (Pub No. US 200210036994 A1)** in view of **Miyoshi et al. (US 6738646 B2)**. Applicant traverses these rejections.

Claims 2, 3, 4, 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Hub[sic] et al. (Pub No. US 200210036994 A1)** and **Miyoshi et al. (US 6738646 B2)** as applied to claims 1, 6, 9, 16, 10, 17, 14, 21, 15, 23, above, and further in view of Gesbert et al. (US 6760882 B1). Applicant traverses these rejections.

Claims 7, 8, 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Hub[sic] et al. (Pub No. US 200210036994 A1)** and **Miyoshi et al. (US 6738646 B2)** and Gesbert et al. (US6760882 B1) as applied to claims 1, 6, 9, 16, 10, 17, 14, 21, 15, 23, 2, 3, 4, 5 above, and further in view of Darabi et al. (US 6970681 B2). Applicant traverses these rejections.

Claims 11, 12, 13, 18, 19,20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Improper Art Citation

Each of the above rejections include Huh et al. (Pub No. US 200210036994 A1) and Miyoshi et al. (US 6738646 B2). Applicant submits that Huh et al. and Miyoshi et al. are improper art.

The application date of the Applicant's non-provisional patent application is Jan. 16, 2002. The application claims priority under 35 U.S.C. §119(e)(1) to U.S. Provisional application 60/262,007, filed on Jan. 16, 2001.

Huh et al. was filed as an U.S. application on Jun. 27, 2001 claiming priority under a not relevant, non-**35 U.S.C. §351** treaty to an application in the Korean language.

Miyoshi et al. was filed as an U.S. application via **35 U.S.C. 351** treaty on Jun. 25, 2001. Miyoshi et al.'s §371(2) date is Feb. 25, 2002 which is after Applicant's non-provisional filing date. The non-**35 U.S.C. §351** treaty date of Jun. 26, 2000 is not relevant. Furthermore, the application is in Japanese.

35 U.S.C. 103 Conditions for patentability; non-obvious subject matter.

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in **section 102** of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the

claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). See MPEP § 2143 - § 2143.03 for decisions pertinent to each of these criteria.

The initial burden is on the examiner to establish a *prima facie* case of obviousness. Examiner in the present Examination has failed to overcome the burden. In the previous Office Action, Applicant had respectfully pointed out to the Examiner that the earliest priority date of Darabi et al. is November 14, 2001, which is later than the earliest priority date of Applicant's application. The earliest priority date of Applicant's application is January 16, 2001, which is earlier than Darabi et al. Therefore, Darabi et al. is not a proper reference. Applicant respectfully requests the Examiner to withdraw the rejection of claims 7, 8, and 22. In item 4, Examiner continued to use improper art to reject claims 7, 8, 22. All Examiner said in response to the Applicant's argument was that they have been fully considered but they are not persuasive.

In the present Office Action, Examiner continues to ignore the Patent Laws under Title 35 and court decisions such as *Milburn*. A patent foreign priority date of a US patent or US Patent Publication can only be used when the US patent was filed designating the United States under the WIPO treaty defined in **35 U.S.C. §351** and only if the international application was published in English.

Applicant believes this application and the claims herein to be in a condition for allowance. Please charge extension fee and any additional fees, or credit overpayment to Deposit Account No. 20-0668. Should the Examiner have further inquiry concerning these matters, please, contact the below named attorney for Applicant.

Respectfully submitted:

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